IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.104 OF 2006

WITH

CIVIL APPLICATION NO.118 OF 2006

Shri.Kishin Naraindas Daryani & Anr....Appellants

Versus

Shri.Pessumal Chimandas Valeja & Ors...Respondents

.....

Mr.G.S.Godbole with Mr.J.S.Chandani for Appellants.

Mr.J.M.Puranik for Respondents 1 to 6.

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CORAM: A.M.KHANWILKAR, J.

AUGUST 10, 2006.

P.C.

1. Heard Counsel for the parties.

2. Admit. Mr.Puranik waives notice for Respondents 1 to 6/original Plaintiffs. Respondents 7 and 8 are formal parties for the purpose of present proceedings.

3. By consent, Appeal is heard forthwith, as

short question is involved.

4. This Appeal from Order takes exception to the Judgment and Order passed by the 3rd Ad-hoc District Judge, Kalyan dated December 30, 2005 below Exhibit 74 in Misc. Civil Application No.1 of 1996. Following order has been passed, which is subject matter in this Appeal:

": O R D E R :

(i) The application Exh.74 is hereby granted.

(ii) The respondent Nos.2 to 4 be sent in Civil Prison for a period of one month for breach of injunction Order. The Appellants are directed to deposit subsistence allowance in respect of respondent Nos.2 to 4 as per Civil Manual.

(iii) The Disputed building standing on Rom No.19, 201 Block No.A-33/34, Ulhasnagar No.1 and any other immovable property belonging to respondent Nos.1 to 4 be attached."

5. Insofar as the finding recorded by the Court below that the Appellants have constructed building and sold flats knowing full well that order of injunction was operating against them in

respect of the suit property does not warrant interference. In other words, it has been found as of fact that the acts of commission and omission of the Appellants were deliberate and contemptuous, for which, action under Rule 2A was imperative to remedy the mischief, the said finding recorded by the Court below is unexceptionable. In this order, I have no hesitation to uphold the said finding of fact reached by the Court below.

6. The question, however, is with regard to the operative order passed by the lower Court. According to the Appellants, Rule 2A enables the Court, on recording of finding of guilt, either to attach the property in question or to order detention of the responsible person in civil imprisonment for a term not exceeding three months. The grievance before this Court is that no reason whatsoever has been offered by the Trial Court as to why both these directions have been issued by the lower Court.

7. According to the Appellants, the order of refusing to refund amount of Rs.5,00,000/- (Rupees

Five Lakhs) to the Appellants would meet the ends of justice. Portion of that amount can be made over to the Respondents/Plaintiffs being injured party, so as to bring quietus to the entire controversy. It is also argued that in view of the recent enactment of validating the illegal/unauthorised structures in the City of Ulhasnagar by virtue of Regularisation of Unauthorised Developments in the City of Ulhasnagar Ordinance, 2006, the relief claimed in this Suit cannot be granted by the Civil Court.

8. In this backdrop, it is contended that instead of requiring the Appellants to undergo sentence awarded by the lower Court for a period of one month for breach of injunction order, in the interest of justice, it would be sufficient to affirm the order of attachment and require the Appellants to pay amount of Rs.5,00,000/- (Rupees Five Lakhs) in lieu of sale of the property in question and that amount can be adjusted as sale proceeds to be disbursed to the injured party.

9. All these aspects will have to be

considered by the Court of first instance, which is required to pass either order of attachment or order of detention of the person in civil imprisonment or Court. If the Court of first instance passes both the orders of attachment as well as detention of civil imprisonment, it will have to record reasons therefor. This is so because it is also open to the Court to pass either order of attachment of the property to be sold, and compensate the injured party out of the sale proceeds or direct detention of the civil imprisonment for a term not exceeding three months.

10. Thus understood, while confirming the finding of guilt recorded by the Court below, the impugned order is set-aside and parties are relegated before the lower Court for considering above aspects and give opportunity to the Appellants to be heard on the point of sentence and then proceed to record reasons for the nature of order that it proposes to pass. The Court below will consider all aspects relevant for the purpose of final order to be passed on its own merits in accordance with law.

11. Original Application Exhibit 74 is accordingly restored to the file of the lower Court for being considered afresh on the above terms, to be disposed of expeditiously, preferably within six weeks from the receipt of writ of this Court.

12. The parties shall appear before the 3rd Ad-hoc District Judge, Kalyan, on 30th August 2006 at 11.00 a.m., on which date, the Court may pass suitable orders as may be advised.

13. At this stage, Counsel for the Respondents/Plaintiffs has brought to my notice that the Appellants have not complied with the direction contained in order dated 9th March 2005 in Appeal from Order No.172 of 2005, in particular, mentioned in Paragraph 27(f) (operative order) in depositing aggregate sum of Rs.15,000/- (Rupees Fifteen Thousand) which was to be made over to the Respondents/Plaintiffs and Respondent No.8 in the Appeal from Order. Counsel for the Appellants, on instructions of the Appellants, who are present in Court, state that the said direction has already

been complied with and the requisite amount of Rs.15,000/- (Rupees Fifteen Thousand) has been deposited in the Court of concerned 3rd Ad-hoc District Judge, Kalyan. The lower Court will ascertain this position. If this statement is found to be false, the Court will have to consider initiating action of perjury and/or contempt for making such false statement before this Court. That aspect will be considered at appropriate stage.

14. It is clarified that although the operative order is set-aside, the order of attachment in respect of property in terms of prayer clause (b) of the Plaint shall continue till the final order is passed by the lower Court in terms of the above order.

15. Appeal from Order and the cognate Civil Application disposed of on the above terms.

A.M.KHANWILKAR, J.